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AUG 31 2009

OFFICE OF PETITIONS

In re Application of :
Thomas Scherer, et al. :
Application No. 10/582,572 : ON PETITION
Filed: June 12, 2006 :
Attorney Docket No. WUE-56 :
:

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 8, 2009, to revive the above-identified application.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of October 18, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Since the amendment submitted does not prima facie place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

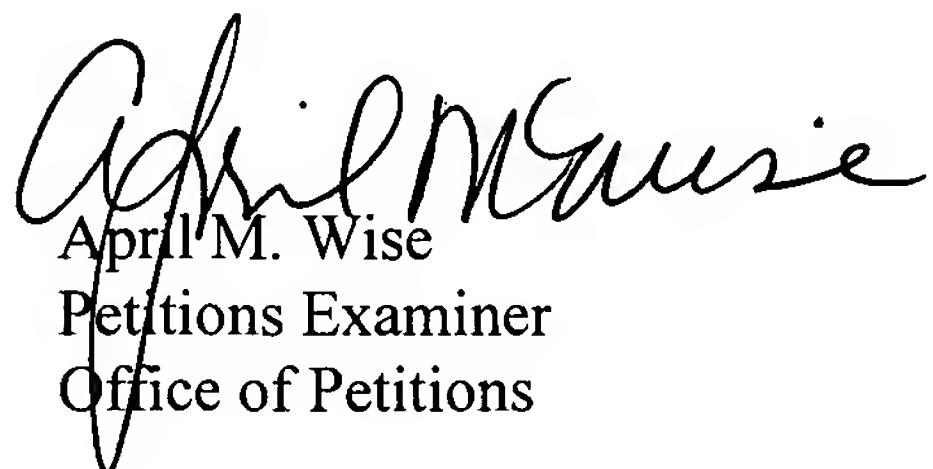
The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED *nunc pro tunc***.

The Technology Center was without authority to act further in the case absent a grantable petition reviving this application after abandonment. Nevertheless, in view of this decision on petition the RCE is now considered a proper filing and the actions of the Technology Center taken thereafter are hereby ratified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3644 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.


April M. Wise
Petitions Examiner
Office of Petitions